

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BRITESMILE, INC. and BRITESMILE
DEVELOPMENT, INC.,

No. C 02-03220 JSW

Plaintiffs,

v.

**ORDER OF AWARD OF
ATTORNEYS' FEES AND COSTS
TO DISCUS DENTAL**

DISCUS DENTAL, INC.; SALIM NATHOO

Defendants.

AND RELATED COUNTERCLAIMS
_____ /

On July 16, 2004, the Court granted the motion of Plaintiffs BriteSmile, Inc. and BriteSmile Development, Inc. (collectively "BriteSmile") for leave to file an amended complaint and to dismiss related counterclaims. As a condition of providing leave to amend, the Court awarded fees and costs to Defendant Discuss Dental, Inc. ("Discuss Dental") incurred in defending against the counterclaims BriteSmile dismissed pursuant to Federal Rule of Civil Procedure 15 ("Rule 15"). *See General Signal Corp. v. MCI Telecommunications Corp.*, 66 F.3d 1500, 1514 (9th Cir. 1995) ("[A] district court, in its discretion, may impose costs pursuant to Rule 15 as a condition of granting leave to amend in order to compensate the opposing party for additional costs incurred because the original pleading was faulty."); *see also SL Waber, Inc. v. American Power Conversion Corp.*, 135 F.Supp.2d 521, 527-528 (D. N.J. 1999) (noting that court has discretion to impose costs under Rule 15 to reimburse a non-amending party for costs and attorneys' fees incurred in defending against original pleading, but declining to award costs where amending party gave assurances that it would never sue other party on the patent).

1 Having reviewed the parties' papers addressing the amount of fees and costs incurred in
2 defending against the dismissed counterclaims, the Court HEREBY ORDERS that BriteSmile
3 pay reasonable fees and costs as sanctions to Discus Dental pursuant to Rule 15 in the amount of
4 \$38,056.95. BriteSmile shall pay this amount to Discus Dental by no later than May 25, 2005.

5 **IT IS SO ORDERED.**

6
7 Dated: May 10, 2005

/s/ Jeffrey S. White
JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE